

REMARKS/DISCUSSION OF ISSUES

Claims 1, 11, 21 have been amended to clarify that the transaction must be anonymous. While “anonymous” was previously an element of the preamble, this amendment is intended solely to clarify the preamble, and not to avoid any reference. Support for the amendment is found, inter alia, in the preamble of the claims, as well as on page 12, lines 14-30 and in FIG. 4 including block 420.

In the Office Action, the Examiner rejected pending claims 1-25 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,629,082 to *Hambrecht et al.* in view of United States Patent Publication 2001/0034631 to Kiselik. Applicants traverse this rejection and respectfully request reconsideration and further examination of the present application under 37 CFR § 1.112.

The combination of *Hambrecht* and Kiselik fails to teach or suggest each and every element of the claims, and therefore the §103(a) rejection fails. Specifically, the references alone or in combination fail to teach or suggest “receiving agreement of the matched supplier and purchaser at the exchange server to execute the anonymous transaction” as claimed in claims 1, 11 and 21.

Specifically, neither *Hambrecht* nor Kiselik teach the benefits of keeping a transaction anonymous. Several of these benefits are described in the background of the instant application, such as on pages 1 and 2 of the specification. Indeed, Kiselik unequivocally teaches away from an anonymous transaction, by noting the benefits of requiring a “rating by the requester of the performance of the satisfier and a rating by the satisfier of the performance of the requester are entered into the computer system for continuous updating of performance ratings.” (Abstract, Kiselik). The dangers of exactly such a system are described in the instant specification on page 2, lines 1-11 – an unscrupulous purchaser or supplier can enter into a legitimate transaction to glean their business partner’s identity and then use that identity to flood an exchange with dummy orders to manipulate market position. Therefore it is incontrovertible that Kiselik teaches away

from use of an anonymous transaction as claimed – the feedback mechanism precludes true anonymity.

The recent *KSR* decision mandates that these claims be found patentable over the prior art. *See, KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1734, 82 USPQ2d 1385, 1391 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966). *See also KSR*, 127 S.Ct. at 1734, 82 USPQ2d at 1391 (“While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.”)

In *KSR*, the Supreme Court reiterated that claims should be held patentable where even though the elements were known in the prior art, the fact that they work together in an unexpected manner renders the claims not obvious. Here, the fact that the prior art teaches the desirability of a user rating system is unequivocal. Such a teaching can only teach away from the desirability of anonymous transactions.

These claims are perhaps most similar to the *Adams* case discussed in *KSR*. *KSR*, 127 S.Ct. at 1740, 82 USPQ2d at 1395 (emphasis added). In that matter, Adams designed a batter using certain types of electrodes, and the prior art warned that risks were involved in using the same certain types of electrodes. In that matter, and as affirmatively commented by the Supreme Court, the fact that the elements worked together in an unexpected and fruitful manner supported the conclusion that the design was not obvious to those skilled in the art.

Similarly, in this matter, anonymity was known prior to these claims, but the prior art taught that anonymity was to be avoided in commercial transactions. The fact that anonymity can be beneficial is unexpected and fruitful in that the disadvantages of the prior art can be avoided.

Hambrecht does not cure this defect of Kiselik. In fact, Hambrecht further teaches away from the instant claims. While Hambrecht does not explicitly teach that the entity being formed with the capital formation needs to know the identity of the investors, Hambrecht clearly teaches that the inventors need to know the identity of the entity being formed. For example, see the abstract:

Techniques are provided for an auction system that is used for pricing and allocating equity securities. Information about an offering to accept bids for equity shares is provided to qualified potential purchasers and non-qualified potential purchasers. Bids from potential purchasers for equity shares

Furthermore, Hambrecht implicitly requires that the issuer must know the identity of the purchaser. Without such knowledge the issuer would not be able to pay dividends, for example.

Claims 2-10, 12-20 and 22-25 depend directly or indirectly from one of claims 1, 11, or 21, and are therefore patentable over the references for at least the same reasons.

Withdrawal of the rejections to claims 1-25 is requested.

CONCLUSION

The Applicants respectfully submit that claims 1-25 fully satisfy the requirements of 35 U.S.C. §§102, 103 and 112. In view of the foregoing, favorable consideration and early passage to issue of the present application is respectfully requested.

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Respectfully Submitted,
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